decrease or increase the sentence, and may again use the opportunity to issue sentencing guidelines.

2. ALTERNATIVE DISPUTE RESOLUTION

Introduction

Many disputes are resolved informally, for example, through negotiation. However, where an informal approach is unsuccessful or inappropriate, formal mechanisms must be available to ensure the dispute is resolved fairly. The traditional mechanism is the court system. However, for a variety of reasons, the courts themselves are not always the most suitable or appropriate method. It is for this reason that a range of alternative mechanisms have been developed.

Limitations of the courts

There are a number of factors which limit the suitability of the courts as a mechanism for resolving disputes:

(a) **cost:** using the courts is very expensive, both for the individuals concerned and for society as a whole. Furthermore, this expense may not be justified by the value of the dispute.

(b) **delay:** court proceedings are very time consuming and many disputes need a much more urgent solution.

(c) **inaccessibility:** in addition to the factors of cost and delay, many people (particularly those from the least-advantaged sections of society) find the courts intimidating and inaccessible.

(d) **inappropriateness:** the adversarial nature of court proceedings is often inappropriate for the type of dispute; for

example, family and matrimonial disputes, especially where children are involved.

(e) incapacity: the court system simply could not cope efficiently with all the disputes which require formal resolution.

Nevertheless, the court still performs a valuable role, both in resolving those disputes suitable for any of the alternatives (for example, criminal cases) and in supervising the work of the alternative mechanisms.

The main forms of alternative dispute resolution

(a) Tribunals

There are two forms of tribunal:

Administrative tribunals: administrative (or public) tribunals are designed to deliver justice quickly, cheaply, and with the minimum of formality. While the large number of tribunals makes it difficult to generalise, certain common characteristics can be identified:

(a) all administrative tribunals are created by statute.
(b) a tribunal will usually have three members: a legally-qualified chair and two lay experts.
(c) tribunal members can usually only be dismissed with the consent of the Lord Chancellor. This is an essential safeguard against executive interference in the independence of the tribunal.
(d) procedures are kept as informal as possible. However, some tribunals, such as the Mental Health Review Tribunal, have to be quite formal.
(e) the caseload of different tribunals varies widely. Some (such as the Social Security Appeals Tribunal) deal with thousands of cases each year, while others (for example, the Plant Varieties and Seeds Tribunal) deal with only one or two.
(f) appeal on a point of law can generally be made to the High Court.
(g) tribunals are subject to the supervisory jurisdiction of the Queen's Bench Divisional Court via judicial review.
(h) the work of tribunals is also monitored by the Council on

Tribunals (established in 1958), which delivers an annual report to Parliament.

Domestic tribunals: domestic (or private) tribunals are concerned with the discipline of members of a particular profession or organisation (for example, doctors, solicitors). They are subject to the same rules of natural justice and fair procedure as administrative tribunals. There may also be specific provision for appeals to the courts (for example, to the Privy Council from the General Medical Council).

Advantages: there are five main advantages to the use of tribunals:

(a) **cost:** tribunal proceedings are inexpensive, both in absolute terms and relative to the cost of court proceedings.

(b) **speed:** proceedings are quicker than court proceedings. This also helps to minimise cost.

(c) **informality:** proceedings are kept as informal as possible. This makes them less intimidating than court proceedings and, hence, more accessible.

(d) **expertise:** lay members are appointed for their expertise in the area to which the tribunal relates. The specific jurisdiction of the tribunal develops this expertise further and helps to ensure consistency.

(e) **capacity:** tribunals, which deal with approximately 250,000 cases each year, relieve the courts of an otherwise unmanageable burden.

Disadvantages: there are three potential disadvantages to the use of tribunals:

(a) **poor quality decision-making:** the speed and informality of tribunal proceedings creates a risk of poor quality decision-making. However, this is guarded against through the requirements of fair procedure and natural justice, supervision by the courts, and monitoring by the Council on Tribunals.

(b) **bias:** there is a risk that the use of experts may create a bias against the inexpert claimant. However, this is again met by the safeguards outlined above and the requirement of balance in the membership of many tribunals (for example, industrial tribunals).

(c) **representation:** this is a more significant problem. While professional representation is permitted before most tribunals, legal aid is rarely available. Although an increased use of lawyers runs a risk of increased formality, it is hard to avoid the conclusion that representation should be available equally to all.

(b) Arbitration

Arbitration is the reference of a dispute to an independent third party for determination. The arbitrator (often a member of the Chartered Institute of Arbitrators) makes a decision known as an 'award'. While arbitration is essentially a private arrangement, it is subject to the supervisory jurisdiction of the courts and regulated by statute. There are three areas where the use of arbitration is particularly common:

(a) **Commercial arbitration:** many commercial contracts contain an arbitration clause. This avoids the cost, time and bad feeling that is often involved in litigation, and which could damage future business relationships. It is also a private arrangement which protects commercially sensitive information.

(b) **Industrial arbitration:** arbitration is frequently used to resolve industrial disputes. The Advisory Conciliation and Arbitration Service (established by the Employment Protection

Act 1975) offers a specialised service to disputing parties. This is a voluntary process whereby the decision of the arbitrator is not legally binding. However, once the parties have committed themselves to the process they are unlikely to reject the decision.

(c) **Consumer arbitration:** many trade associations (such as ABTA), in conjunction with the Office of Fair Trading, operate codes of practice which include arbitration schemes. These offer consumers an attractive low-cost alternative to court proceedings. However, these schemes have three main failings:

(i) many consumers are unaware that they exist;
(ii) the association has limited sanctions against any trader who breaches the code;
(iii) those traders most likely to cause problems are also those least likely to subscribe to a code of practice.

The courts themselves also offer an arbitration service in the County Courts for small claims of £3,000 or less.

Advantages: arbitration shares many of the advantages of tribunals: cost, speed, informality, expertise. It also has the additional advantages of privacy (as noted above in relation to commercial arbitration) and convenience (the arbitration takes place at a time and place to suit the convenience of the parties).

Disadvantages: the potential disadvantages of poor quality decision-making and bias are again safeguarded against through the framework of judicial and statutory regulation, and the frequent use of professional arbitrators.

(c) Inquiries

An inquiry is often used to resolve issues of general public or environmental concern; for example, accident inquiries and planning inquiries. However, the length of time and cost involved limits their usefulness as an alternative to the courts. They are a highly specialised mechanism for dealing with very specific issues.

(d) The Ombudsman

The Ombudsman (or 'grievance-man') is an independent official

responsible for investigating complaints of maladministration or inefficiency. This concept (which originated in Scandinavia) was first used in Britain in 1967 with the introduction of an ombudsman for central government (the Parliamentary Commissioner for Administration). Public ombudsmen followed for both local government and the National Health Service. The Courts and Legal Services Act 1990 introduced ombudsmen for both legal services and conveyancing. The private sector has also used this concept, particularly in the financial services sector. As it is the only mechanism for investigating complaints, not of wrongs *per se*, but of inefficiency or poor administration, the ombudsman is a valuable addition to the range of alternatives available.

(e) Advice and guidance

It may be argued that the consumer of the services of these various dispute resolution mechanisms is not given adequate guidance in choosing the one most appropriate to their needs. In some parts of the USA a 'multi-door' courthouse approach is used. Here, a person with a dispute is seen first by an 'intake specialist' who advises them on the best method to use. Given that the local courthouse is not the focus of the community in Britain that it is in the USA, this is a service that might be best performed here by the Citizens Advice Bureaux.

3. THE LEGAL PROFESSION

Introduction

The legal profession in England and Wales is divided into two branches: barristers and solicitors. In general terms, the barrister may be thought of as the legal consultant and the solicitor as the legal general practitioner. Solicitors are also often assisted in their work by legal executives.

Barristers

Work and organisation: there are currently approximately 8,400 practising barristers, the vast majority based in London. The